

**OFFICE OF THE MAYOR  
CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR

ROY K. AMEMIYA, JR.  
MANAGING DIRECTOR

GEORGETTE T. DEEMER  
DEPUTY MANAGING DIRECTOR

October 16, 2017

The Honorable Ron Menor, Chair  
and Councilmembers  
Honolulu City Council  
530 S. King Street, Room 202  
Honolulu, Hawaii 96813

RECEIVED  
CITY CLERK  
C & C OF HONOLULU  
2017 OCT 16 PM 1:54

Dear Chair Menor and Councilmembers:

SUBJECT: Resolution Initiating Amendments to the Revised Charter of the City and County of Honolulu 1973 (2017 Edition) relating to the Board of the Honolulu Authority for Rapid Transportation

Act 1, First Special Session, Session Laws of Hawaii 2017 ("Act 1"), provides for the appointment by the Hawaii State Legislature, through the Speaker of the House of Representatives and the Senate President, of four non-voting, ex-officio members to the Board of Directors of the Honolulu Authority for Rapid Transportation ("HART"), effective as of September 5, 2017, the date on which Governor David Y. Ige signed Act 1 into law. The State of Hawaii Department of the Attorney General has publicly stated its position that Act 1 is presumed constitutional and is legally defensible.

It is my concern that the legislative appointments provided for in Act 1 conflict with the Revised Charter of the City and County of Honolulu 1973 (2017 Edition) ("RCH" or "Charter") governing the composition of the HART Board, in violation of the fundamental principle of home rule embodied in Article VIII, Section 2 of the Hawaii State Constitution. Section 17-104 of the Charter provides for a ten-member board, comprising three voting members appointed by the Mayor of the City and County of Honolulu ("City"), three voting members appointed by the City Council ("Council"), two ex-officio voting members, one ex-officio non-voting member, and one voting member elected by a majority vote of the other eight voting members.

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In order to reconcile Act 1 with the Charter and cure any constitutional deficiencies, I am enclosing with this letter for the Council's consideration a draft RESOLUTION INITIATING AMENDMENTS TO THE REVISED CHARTER OF THE CITY AND COUNTY OF HONOLULU 1973 (2017 EDITION) RELATING TO THE BOARD OF THE HONOLULU AUTHORITY FOR RAPID TRANSPORTATION.

As is evident by the title to the Resolution, I am proposing, and would approve, a Charter amendment proposal adopted by the Council confirming the Legislature's appointment of four non-voting members to the HART Board. Under the Charter, the Resolution must pass three readings by an affirmative vote of two-thirds of the entire membership of the Council at each reading. The majority vote of the electorate at the next general election in 2018 is then required to enact the Charter amendment. See RCH §§ 15-102.1, 15-102.2, 15-103, 15-105.3.

I understand the Speaker of the House has expressed a desire to have his two appointees sit on the HART Board, along with the two appointees of the Senate President, as soon as these appointments are ready to be announced. I am not opposed to this, even though it will take until the next general election to amend the charter to reflect Act 1's legislative intent, assuming the voters of Honolulu approve the amendment. I will support the amendment to the charter.

I am concerned, however, that if the HART Board were to have fourteen members, nine of whom are voting and five of whom are non-voting, given that the Charter currently requires "[a] majority of the members shall constitute a quorum" and "[t]he affirmative vote of a majority of the entire membership shall be necessary to take any action, ..." eight of the nine voting members must always attend all meetings and must always vote affirmatively in order for the HART Board to take any action. In other words, as eight of the members constitute a quorum, all eight voting members must always attend all HART Board meetings and must always vote the same. This would significantly interfere with the HART Board's ability to conduct business. The attached draft resolution would resolve the quorum and voting issue by amending the Charter so that for the HART Board only, the number for quorum would remain at six, and the affirmative vote of a majority of all voting members would be required to take any action.

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To constitutionally effectuate the Legislative appointments to the HART Board without undermining the HART Board's ability to fulfill its duties and functions, I am asking the Council to adopt the attached Resolution so that the voice of the people of the City and County of Honolulu can be heard and respected through their vote at the next general election in 2018.

Thank you for your consideration. I look forward to working with you on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kirk Caldwell", with a long horizontal flourish extending to the right.

Kirk Caldwell  
Mayor

Attachment



## RESOLUTION

INITIATING AMENDMENTS TO THE REVISED CHARTER OF THE CITY AND COUNTY OF HONOLULU 1973 (2017 EDITION), RELATING TO THE BOARD OF THE HONOLULU AUTHORITY FOR RAPID TRANSPORTATION.

WHEREAS, in the 2010 general election, the electorate of the City and County of Honolulu approved an amendment to the Revised Charter of the City and County of Honolulu 1973, as amended, creating the Honolulu Authority for Rapid Transportation, consisting of a board of directors (the "Board"), executive director, and necessary staff; and

WHEREAS, the charter amendment approved by the voters provided for a Board consisting of ten members -- nine voting members and one non-voting member; and

WHEREAS, the charter amendment approved by the voters provided for the members to be appointed as follows:

- The Mayor shall appoint three members;
- The City Council shall appoint three members;
- The State Director of Transportation shall be an ex-officio voting member;
- The City Director of Transportation Services shall be an ex-officio voting member;
- The ninth member shall be appointed by a majority vote of the eight voting members; and
- The City Director of the Department of Planning and Permitting shall be the ex-officio non-voting member; and

WHEREAS, the charter amendment is codified at Article XVII of the Revised Charter of the City and County of Honolulu 1973 (2017 ed.) ("Charter"); and

WHEREAS, the composition and appointment of the Board, as set forth above, is codified at Sections 17-104.2, 104.3, and 104.4 of the Charter; and

WHEREAS, Act 1, First Special Session, Session Laws of Hawaii 2017 ("Act 1") would add four non-voting members to the Board to be appointed by the President of the Senate and the Speaker of the House of Representatives as follows:

Notwithstanding any law, charter provision, or ordinance to the contrary, in any county with a population greater than five hundred thousand, in order to ensure the appropriate use of state authorized funds to finance a locally preferred alternative for a mass transit project, the president of the senate and speaker of the house of representatives shall



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each appoint two non-voting, ex officio members to the board of directors of the county's rapid transportation authority. The terms for each member appointed pursuant to this section shall be determined by the presiding officer who appointed them.

and

WHEREAS, the Mayor of the City and County of Honolulu and the City Council do not object to the President of the Senate and the Speaker of the House each appointing two non-voting members to the Board, provided that adjustments are made to the Board's quorum and voting requirements, as set forth below, and finds that any change to the composition of the Board must be enacted through a Charter amendment approved by the voters; and

WHEREAS, the City Council desires to propose a Charter amendment to be placed on the ballot at the 2018 general election so that the voters may decide whether to effectuate the modifications to the composition of the Board made by the Legislature in Act 1; and

WHEREAS, if the voters approve adding to the Board up to four additional non-voting members appointed by the Legislature, the membership of the Board would increase to fourteen, and, pursuant to Section 13-103.1(g) and (i) of the Charter, eight members would be required for quorum and an affirmative vote of eight of the nine voting members would be required to take action; and

WHEREAS, a requirement of eight members for quorum and the affirmative vote of eight of the nine voting members to take action would significantly impede the Board's ability to conduct business, and the addition of non-voting members appointed by the Legislature should not so burden or undermine the Board's effectiveness; and

WHEREAS, the City Council finds that the non-voting members appointed by the Legislature should not be counted for purposes of determining the number of members required for quorum or the number of votes required to take action, and that the number required for quorum should remain at six, and the number of affirmative votes required to take action should be revised to allow a majority of all voting members to take action; and

WHEREAS, because the 2018 general election immediately follows the general election at which the 2015-2016 Charter Commission submitted its proposals, pursuant



## RESOLUTION

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to Section 15-102.1 of the Charter, the Mayor's approval is required for the Charter amendment proposed by this resolution to be submitted to the electors; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu:

1. That the following question be placed on the ballot at the 2018 general election:

"Shall the Revised Charter of the City and County of Honolulu 1973 (2017 Edition) relating to board of the Honolulu Authority for Rapid Transportation (the "Board") be amended:

1. to increase the number of Board members from ten to a maximum of fourteen;
2. to provide that the President of the Senate and the Speaker of the House may each appoint up to two non-voting members, for terms to be determined by the appointing authority;
2. to specify that six members shall constitute a quorum; and
3. to specify that the affirmative vote of a majority of all voting members of the Board shall be necessary to take any action?"

2. That Section 17-104 of the Revised Charter of the City and County of Honolulu 1973 (2017 ed.) be amended to read as follows:

**"Section 17-104. Powers, Duties and Functions of the Board of Directors —**

1. The board shall:
  - (a) Be the policy making body of the authority.
  - (b) Determine the policies for the development of the fixed guideway system.
  - (c) Have the authority to issue revenue bonds under the name of "Honolulu Authority for Rapid Transportation" in accordance with HRS Chapter 49, subject to council approval.
  - (d) Review, modify as necessary, and adopt an annual operating budget for the authority and an annual capital budget for the fixed guideway system submitted by the executive director of the authority.
  - (e) Request and accept appropriations from the city, and request and accept grants, loans and gifts from other persons and entities.
  - (f) Appoint and may remove an executive director, who shall be the chief executive officer of the public transit authority. The qualifications, powers, duties, functions, and compensation of the executive director shall be established by the board.
  - (g) Evaluate the performance of the executive director at least annually; and submit a report thereon to the mayor and the council.



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- (h) Review, modify as necessary, and adopt a six-year capital program within six months of the creation of the authority and annually update the six-year capital program, provided that such capital programs shall be submitted by the executive director.
- (i) Determine the policy for approval of arrangements and agreements with the federal government and with any public entity or utility owning or having jurisdiction over rights-of-way, tracks, structures, subways, tunnels, stations, terminals, depots, maintenance facilities, air rights, utility lines, and transit electrical power facilities, subject to approval of the department of transportation services if such arrangements or agreements may affect the operation or maintenance of the fixed guideway system.
- (j) Adopt and enforce rules and regulations having the force and effect of law to carry out the provisions of this article of this charter, and any governing federal or state agreements or laws, including rules and regulations pertaining to the organization and internal management of the authority and allocation of decision-making responsibility as between the board and the administrative staff.
- (k) Submit an annual report to the mayor and council on its activities.
- (l) In addition to the general powers under this subsection, other general or specific powers may be conferred by ordinance upon the board, so long as the powers are consistent with this article of the charter.

2. The board shall consist of ~~[ten]~~ a maximum of fourteen members, nine voting members and ~~[one]~~ a maximum of five non-voting ~~[member]~~ members. All members shall serve part-time. The board shall be governed by the provisions of Section 13-103 of this charter, except that subsections (b), ~~[and]~~ (e), (g), and (i) shall not apply and as otherwise provided herein.

3. Appointed members. There shall be seven appointed members. The mayor shall appoint three members. The council shall appoint three members. The six appointed and two ex officio voting members shall appoint, by majority vote, a ninth member.

The initial appointments of the seven appointed members shall be as follows: One member from each mayoral or council appointment shall be designated to serve a five-, four-, and three-year term. The ninth member appointed by the voting members shall serve a two-year term.

4. Ex officio members. The state director of transportation and the city director of transportation services shall be ex officio voting members of the board. The director of the department of planning and permitting shall be the ex officio non-voting member of the board. The ex officio members of the board shall not be subject to any term limit.



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5. Legislative appointments. The President of the Senate and the Speaker of the House of Representatives may each appoint no more than two non-voting members, for terms to be determined by the appointing authority.

6. Quorum. Six members shall constitute a quorum.

7. Board Action. The affirmative vote of a majority of all voting members shall be necessary to take any action, and such action shall be made at a meeting open to the public.

3. That, in Section 2 of this resolution, Charter material to be deleted is bracketed and stricken, and new Charter material is underscored. When revising, compiling or printing these Charter provisions for inclusion in the Revised Charter of the City and County of Honolulu 1973 (2017 ed.), the Revisor of the Charter need not include the brackets, the bracketed material, or the underscoring.
4. That, if these Charter provisions are amended by any other Charter amendment(s) approved by the electors in the 2018 general election, the Revisor of the Charter, in revising, compiling or printing the Revised Charter: (a) may designate or redesignate articles, chapters, sections or parts of sections, and rearrange references thereto; and (b) shall, except as otherwise expressly provided in this resolution or in the other resolution(s) amending these Charter provisions, give effect, to the extent possible, to all of the amendments approved. The Revisor of the Charter may also change capitalization or the form of numbers and monetary sums for the sake of uniformity.
5. That, upon adoption of this resolution by the Council and approval by the Mayor, the City Clerk be and is hereby directed:
  - A. To prepare the necessary ballots with the question contained in this resolution and with spaces for "yes" and "no" votes on the question for presentation to the electors at the 2018 general election. The City Clerk may make technical and non-substantive changes to the form of the question presented in order to conform it to the form of other Charter amendment questions presented to the electors at the same election; and
  - B. To publish the above-proposed Charter amendments at length in a daily newspaper of general circulation in the City and County of Honolulu at least 45 days prior to their submission to the electors at the 2018 general election.





**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

No. \_\_\_\_\_

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## RESOLUTION

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6. That, upon approval of the Charter amendment question posed in this resolution by a majority of the electors voting thereon, as duly certified, the Charter amendments proposed in Section 2 shall take effect.

INTRODUCED BY:

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DATE OF INTRODUCTION:

\_\_\_\_\_  
Honolulu, Hawaii

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Councilmembers

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
KIRK CALDWELL, Mayor  
City and County of Honolulu